

COMPLAINT INVESTIGATION SUMMARY

COMPLAINT NUMBER: 1606.00
COMPLAINT INVESTIGATOR: Jane Taylor-Holmes
DATE OF COMPLAINT: August 18, 2000
DATE OF REPORT: September 14, 2000
REQUEST FOR RECONSIDERATION: yes (revisions resulting from reconsideration are underscored)
DATE OF CLOSURE: December 4, 2000

COMPLAINT ISSUES:

Whether the MSD of North Posey County Schools and the Evansville-Vanderburgh-Posey Special Education Cooperative violated:

511 IAC 7-7-1(f)(7) with regard to the school's alleged failure to forward the parent's request for a hearing to the Department of Education ("DOE") or otherwise inform the parent that the parent's request for a hearing must be sent to the DOE.

511 IAC 7-12-1(e) with regard to the school's alleged failure to include a school representative with the authority to commit public resources in the case conference committee meeting.

511 IAC 7-12-1 with regard to the school's alleged failure to implement the student's *individualized education program* (the "IEP") as written, specifically:

- a. failing to provide an appropriate individual to teach the student American Sign Language;
- b. failing to provide an appropriate individual to teach the student how to use the communication device; and
- c. failing to provide the student with an instructional assistant during classes.

During the course of the investigation an additional issue was identified, which is:

Whether the MSD of North Posey County Schools and the Evansville-Vanderburgh-Posey Special Education Cooperative violated:

511 IAC 7-12-1(n)(1) with regard to the school's failure to provide the parent a copy of the written notice of parent's rights and procedural safeguards at the time of the case conference committee meeting or within 10 instructional days following the meeting.

FINDINGS OF FACT:

1. The student (the "Student") is ten years old and attends the local elementary school (the "School"), where she is eligible for special education and related services as a student with a multiple handicap.
2. During a CCC meeting on November 17, 1999, the Complainant presented a letter requesting a due process hearing (the "Hearing"). The letter was addressed to the DOE.

3. Notes from the November 17, 1999 CCC meeting indicate that the Complainant was given a Parental Rights and Procedures handbook (the "Handbook"), and the Principal identified the procedures for filing for a Hearing in the Handbook.
4. In a letter dated November 18, 1999, the Supervisor referred the Complainant to page 24 of the Handbook for the procedures to follow for filing for a Hearing. The letter also included the following:

"...the request for a due process hearing must:

 - be in writing and signed;
 - be filed simultaneously with the other parties (including your local school district), their agents and the State Superintendent of Public Instruction, Indiana Department of Education, Room 229, State House, Indianapolis, Indiana, 46204-2798;
 - specify the reasons for the hearing request, including a description of the nature of the problem and any facts related to the problem;
 - include your child's name, address, and name of your child's school of attendance, and;
 - include a proposed resolution to the problem, to the extent known and available."
5. Part of the Complainant's documentation submitted during the complaint investigation included the letter dated November 18, 1999, from the Supervisor explaining the procedures to follow when filing for a Hearing.
6. The Student's CCC met on April 4, 2000, to discuss the Student's communication device and the need for a one-to-one paraprofessional. Agreement was reached with regard to the use of the communication device; however, no agreement was reached with regard to the Student's need for a one-to-one paraprofessional. Page 16 of the written transcript of the April 4, 2000, CCC meeting indicates that the Complainant handed the Principal a written request for a Hearing, which was addressed to the State Superintendent. The letter was copied to the Division's due process coordinator and the local school corporation's superintendent (the "Local Superintendent"). The CCC Summary does not indicate that the Complainant received a copy of the Handbook at the CCC meeting, nor is there any indication of such in the written transcript. There was also no documentation provided to indicate that the Complainant received a copy of the Handbook within 10 instructional days of the CCC meeting.
7. The Director submitted a copy of the Complainant's April 4, 2000 letter as part of this complaint investigation. No copy of the letter was ever received by the State Superintendent, the Division, or the Local Superintendent, although the letter indicates those parties were copied.
8. On or about August 17, 2000, the Complainant contacted the Division regarding the status of her request for a Hearing. Because no request had been received by the State Superintendent or the Division, the Director was contacted by the Division.
9. In a letter dated August 17, 2000, the Director subsequently contacted the Complainant regarding the call from the Division, and the Complainant's April 4, 2000 letter requesting the Hearing. The Director wrote the following.

"The members of the case conference committee understood that you were filing a formal request for a Due Process Hearing with the Indiana Department of Education on that same day, since the letter was addressed to [the State Superintendent]..."
10. At the April 4, 2000 CCC meeting the Complainant requested a one-to-one paraprofessional for the Student for the 2000-2001 school year. The written transcript of the CCC meeting indicates that the Supervisor responded to that request with, "We'll take the recommendation." When asked how

soon the Complainant would know if a paraprofessional would be provided to the Student, the Principal answered, "I don't know. I'm not going to commit resources at this meeting because at first it's going to impact every program in the building. And if an additional hire needs to be made, I will need to go and request..." The Supervisor interjected, "We need to look at resources in the building and how those are assigned..." The Principal then stated, "If we need to hire additional people, it has to be taken to the next level."

11. The Director reported that both the Supervisor and the Principal have the authority to commit public agency resources. However, because both individuals did not agree with the Complainant's request for a one-to-one paraprofessional for the Student, they refused to commit resources at the April 4, 2000 CCC meeting.
12. Prior to September 21, 1998 CCC meeting the Complainant purchased a communication device (the "Dyna Mite") for the Student. The purchase of the Dyna Mite was not the result of an assistive technology assessment or a CCC agreement.
13. The CCC Summaries dated September 21, 1998, January 28, 1999, and April 6, 1999 indicate that the Student's lack of an adequate communication system may be one of the skill deficits causing inappropriate behavior. In another section of the Summaries, where the CCC is to identify adaptations, modifications, and personnel supports needed, it states that an evaluation of the Student's need for an augmentative or assistive device will be discussed at a later date. On the line to indicate augmentative or assistive devices to be used it states "(will use Dyna Mite)." Although the school asserts that the Dyna Mite was to be used as part of the evaluation, none of the Summaries indicate that the Dyna Mite's use was solely for evaluation purposes. At the CCC meeting on September 27, 1999, the CCC determined that "augmentative communication will be available to [the Student] throughout the school day during an extended evaluation period. Within the next 40 days, a decision will be made regarding a communication device to be used at school. The parent provided written consent for this on October 29, 1999.
14. The November 17, 1999 CCC Summary states "[Student] uses sign language and gestures as primary means of communication." The Summary also states that, as the result of a 9-14-99 assistive technology evaluation, "assistive technology is recommended for communication." During the CCC meeting the teacher of record asked if she should use sign language or the communication device with the Student. The Complainant indicated that both should be used. The Supervisor indicated that, as a result of the previous CCC meeting, school staff understood that the augmentative communication device was to be used only as a back up to the use of sign language. Further, the Supervisor stated that the Dyna Mite could not be implemented at the school until the staff had training on the device.
15. The CCC Summary dated April 4, 2000 states that, after the trial period of using the Dyna Mite, ASL and augmentative communication is recommended. The written transcript of the April 4, 2000 CCC meeting indicates that the school had no one knowledgeable about using the communication device.
16. It was agreed upon at the April 4, 2000 CCC that the communication device chosen by the Complainant would be used by the Student at the school, and training of school personnel was then scheduled. The Student's teacher of record, the two special education paraprofessionals, two parents, two speech therapists, and one school administrator were provided training on August 1, 2000. A second training session is scheduled for October 5, 2000.
17. With regard to having a qualified individual to sign to the Student, the CCC Summary dated November 29, 1999 states, "[Teacher's name] her Sp. Ed. teacher has been involved in all therapy sessions to sign to [Student]."

18. The written transcript from the February 3, 2000 CCC meeting includes dialogue between the Complainant and the Student's teacher regarding the Student's continued progress in learning new words at School. The Director reported that the Student's teacher for the 1999-2000 school year was fluent in American Sign Language ("ASL") and introduced new words to the Student on a daily basis. The Director also reported that the Student's current teacher received training in ASL during the summer of 2000, and the instructor of the training reported that the current teacher is also fluent in ASL.
19. None of the Student's *IEPs* indicate that the Student was or is to have her own instructional assistant to work with her during classes.

CONCLUSIONS:

1. Findings of Fact #2, #3, and #4 indicate that the Complainant was informed on two separate occasions regarding the procedures to follow for filing a Hearing. Further, Finding of Fact #5, #6, and #9 indicate that the Complainant maintained a copy of the Supervisor's letter explaining the process for filing for a Hearing, and that the request for a Hearing dated April 4, 2000, was addressed to the State Superintendent. No violation of 511 IAC 7-7-1(f)(7) occurred.
2. Findings of Fact #10 and #11 indicate that two individuals with the authority to commit public agency resources attended the April 4, 2000 CCC meeting; however, because both of these individuals disagreed with the Complainant's request for a one-to-one paraprofessional for the Student, they stated they would take the recommendation but not commit resources. They also indicated they would need to go to a "higher level" for approval. A violation of 511 IAC 7-12-1(e) occurred.
- 3.a. Findings of Fact #14, #17, and #18 indicate that the School has provided and continues to provide an appropriate individual to teach the Student ASL. No violation of 511 IAC 7-12-1 occurred with respect to providing the Student an appropriate individual to teach the Student ASL.
- 3.b. Findings of Fact #13, #14, #15, and #16 indicate that the Student was to use the Dyna Mite. The CCC Summaries do not state that the use of the Dyna Mite is limited to evaluation purposes, and the November 17 CCC Summary clearly indicates the Dyna Mite is to be used. However, no one was trained to use the equipment in order to assist the Student. A violation of 511 IAC 7-12-1 occurred with regard to providing an appropriate individual to teach the Student how to use the communication device.
- 3.c. Findings of Fact #6 and #19 indicate that the Complainant has requested that the Student be provided a one-to-one instructional assistant; however, there has not been a CCC agreement with respect to this issue, and therefore, this provision has not been written into the Student's *IEPs*. No violation of 511 IAC 7-12-1 occurred with respect to the School's failure to provide the Student with an instructional assistant.
4. Although Findings of Fact #2, #3, #4, #5, #6, and #9 indicate no violation of 511 IAC 7-7-1(f)(7) occurred with regard to School's failure to inform the Complainant of the procedures to follow when filing for a Hearing, Finding of Fact #6 also indicates that the Complainant was not given a copy of the Handbook at the CCC meeting, or within 10 instructional days following the meeting. A violation of 511 IAC 7-12-1(n)(1) occurred.

The Department of Education, Division of Special Education requires corrective action based on the Findings of Fact and Conclusions listed above.

CORRECTIVE ACTION:

The MSD of Posey County Schools and the Evansville-Vanderburgh-Posey Special Education Cooperative shall:

1. conduct an inservice training with all local school corporation individuals who participate as agency representatives with the authority to commit public resources during CCC meetings with regard to the requirements of the role. Include in the inservice training that disagreement within the CCC meeting is to be addressed either through mediation or filing for a Hearing, and not by failing to commit agency resources. A copy of the inservice training, along with a list of individuals trained by signature and title shall be submitted to the Division no later than November 1, 2000.
- 2.a. submit a statement indicating that all student *IEPs* shall be implemented as written. Additionally, disseminate a copy of the assurance statement to all local school corporation professional personnel responsible for providing special education and related services to students. A copy of the assurance statement, and a list of individuals by signature and title indicating receipt of the assurance statement shall be submitted to the Division no later than November 1, 2000.
- 2.b. submit a statement from all individuals once they have completed the October 6, 2000, training on using the Dyna Mite that they are able to instruct the Student in using the Dyna Mite, and that they will continue instruction with the Student utilizing the Dyna Mite. A copy of the assurance statement signed by all individuals who have completed the Dyna Mite training shall be submitted to the Division no later than November 1, 2000.
3. submit a statement indicating that all parents shall receive a copy of the Handbook at each CCC meeting or within 10 instructional days following the meeting. Additionally, disseminate a copy of the assurance statement to all local school corporation individuals chairing CCC meetings. A copy of the assurance statement, along with a list of individuals by name and title indicating receipt of the assurance statement shall be submitted to the Division no later than November 1, 2000.